

Update: Crime Victim Rights Manual (Revised Edition)

CHAPTER 5

Victim Privacy

5.4 Defense Discovery of Written or Recorded Statements by Victims

Exculpatory information or evidence.

Insert the following text before the last paragraph on page 84:

A defendant is entitled to disclosure of all exculpatory evidence, even when the evidence was made known only to a law enforcement officer and not to the prosecutor. *Youngblood v West Virginia*, 547 US ___, ___ (2006). In *Youngblood*, a defendant was convicted of two counts of sexual assault, two counts of brandishing a firearm, and one count of indecent exposure. All charges arose from a single incident involving the defendant, three women, and the defendant's friend. The defendant's convictions were based

“principally on the testimony of the three women that they were held captive by Youngblood and a friend of his, statements by [one of the women] that she was forced at gunpoint to perform oral sex on Youngblood, and evidence consistent with a claim by [the same victim] about disposal of certain physical evidence of their sexual encounter.” *Youngblood, supra* at ___.

Several months after the defendant was sentenced, he learned that an investigator had discovered “new and exculpatory evidence” concerning his case. The evidence was

“in the form of a graphically explicit note that both squarely contradicted the State's account of the incidents and directly supported Youngblood's consensual-sex defense. The note, apparently written by [two of the victims], taunted Youngblood and his friend for having been ‘played’ for fools, warned them that the girls had vandalized the house where Youngblood brought

them, and mockingly thanked Youngblood for performing oral sex on [the other victim].” *Youngblood, supra* at ____.

**Brady v Maryland*, 373 US 83 (1963).

Allegedly, the potentially exculpatory note had been given to an officer involved in investigating the defendant’s case. The officer read the note, refused to take possession of it and told the individual who had given him the note to destroy it. The defendant claimed that failure to disclose the note was a *Brady** violation and moved to set aside the verdict. The trial court denied the defendant’s motion and a divided Supreme Court of Appeals affirmed the trial court “without examining the specific constitutional claims associated with the alleged suppression of favorable evidence.” *Youngblood, supra* at _____. In its review of Youngblood’s petition, the Court noted that “Youngblood clearly presented a federal constitutional *Brady* claim to the [West Virginia] Supreme Court.” *Youngblood, supra* at _____. Because none of the West Virginia courts addressed the *Brady* issue, the United States Supreme Court vacated the West Virginia appellate court’s judgment and remanded the case to obtain “the benefit of the views of the full Supreme Court of Appeals of West Virginia on the *Brady* issue.” *Youngblood, supra* at _____.

CHAPTER 8

The Crime Victim at Trial

8.14 Former Testimony of Unavailable Witness

C. Defendant's Right to Confront the Witnesses Against Him or Her

Insert the following text before the June 2005 update to page 264:

Whether hearsay evidence constitutes a “testimonial statement” barred from admission against a defendant where the defendant has not had an opportunity to cross-examine the declarant requires a court to conduct an objective examination of the circumstances under which the statement was obtained. *Davis v Washington*, 547 US ___, ___ (2006). Although the United States Supreme Court did not “produce an exhaustive classification of all conceivable statements . . . as either testimonial or nontestimonial,” the Court expressly stated:

“Statements are nontestimonial when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency. They are testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution.” *Davis, supra* at ___ (footnote omitted).

Davis involved two separate cases (*Davis v Washington* and *Hammon v Indiana*) in which a defendant assaulted a victim, the victim answered questions posed by law enforcement personnel, the victim did not testify at trial, and the victim’s statement was admitted as evidence against the defendant. In one of the cases, *Davis v Washington*, the statements at issue arose from the victim’s (McCottry) conversation with a 911 operator during the assault. After objectively considering the circumstances under which the 911 operator “interrogated” McCottry, the Court concluded that the 911 tape, on which McCottry identified the defendant as her assailant and gave the operator additional information about the defendant, was not testimonial evidence barred from admission by the Confrontation Clause. According to the Court:

“[T]he circumstances of McCottry’s interrogation objectively indicate its primary purpose was to enable police assistance to meet an ongoing emergency. She simply was not acting as a witness; she was not *testifying*.” *Davis, supra* at ___ (emphasis in original).

In the other case, *Hammon v Indiana*, the statement at issue arose from answers the victim (Amy) gave to one of the police officers who responded to a “reported domestic disturbance” call at the victim’s home. Amy summarized her responses in a written statement and swore to the truth of the statement. In this case, the Court concluded that the circumstances surrounding Amy’s interrogation closely resembled the circumstances in *Crawford v Washington*, 541 US 36 (2004), and that the “battery affidavit” containing Amy’s statement was testimonial evidence not admissible against the defendant absent the defendant’s opportunity to cross-examine the victim. The Court summarized the similarities between the instant case and *Crawford*:

“Both declarants were actively separated from the defendant—officers forcibly prevented [the defendant in Amy’s assault] from participating in the interrogation. Both statements deliberately recounted, in response to police questioning, how potentially criminal past events began and progressed. And both took place some time after the events described were over. Such statements under official interrogation are an obvious substitute for live testimony, because they do precisely *what a witness does* on direct examination; they are inherently testimonial.” *Davis (Hammon)*, *supra* at ____ (emphasis in original).

CHAPTER 10

Restitution

10.5 Ordering Restitution in Conjunction With Informal Juvenile Dispositions, Conditional Sentences, Delayed and Deferred Sentences, and Drug Treatment Court Participation

C. Restitution Ordered in Conjunction With Delayed and Deferred Sentences and Dispositions Under the Holmes Youthful Trainee Act

Insert the following text before the last paragraph in subsection (C) on page 318:

An individual is eligible for sentencing under the youthful trainee act for more than one offense. In *People v Giovannini*, ___ Mich App ___, ___ (2006), the Court of Appeals held that a “defendant was not ineligible for sentencing under the [youthful trainee act] solely because he was convicted of two criminal offenses.” The Court explained: “Interpreting MCL 762.11 to permit placement under the [youthful trainee act] only in cases involving a single offense would work contrary to the discretion invested in the trial court and to the overall purpose of the act.” *Id.* at ___.